NOR AZMAN GHADZALI A

v.

PP

COURT OF APPEAL, PUTRAJAYA B
RAMLY ALI JCA
SYED AHMAD HELMY JCA
AZAHAR MOHAMED JCA
[CRIMINAL APPEAL NO: J-07-11-2011]
26 JULY 2012 C

CRIMINAL PROCEDURE: *Appeal - Appeal to Court of Appeal - Jurisdiction to hear and determine criminal appeals - Application for leave - Whether involved determination of any question of law - Whether revolved around question of facts - Whether application outside ambit and scope of s. 50 Courts of Judicature Act 1964* D

CRIMINAL PROCEDURE: *Forfeiture - Powers of Magistrate - Order for forfeiture of vehicle - Pre-requisite for exercise of forfeiture power - Whether fulfilled - Whether offence under s. 33 Commercial Vehicles Licence Board Act 1987 proved - Whether mandatory for Magistrate to order forfeiture* E

The application for leave herein concerned the scope of s. 50(2) of the Courts of Judicature Act 1964 ('CJA') relating to an appeal against a conviction and sentence imposed by the Magistrate's Court under ss. 33 and 51 of the Commercial Vehicles Licence Board Act 1987 ('the Act'). Briefly, the facts were that the applicant was charged before the Magistrate's court under s. 33 of the Act in that as the registered owner of a private van, he had permitted one Othman Ahmad to use the vehicle as a public service vehicle (school bus) without a permit allowing for such use. The applicant, who was unrepresented, entered a guilty plea and upon the prosecution tendering the facts of the case and the relevant exhibits, the Magistrate convicted and sentenced him to a fine of RM1,000 or in default 30 days imprisonment and ordered the forfeiture of the vehicle. In prosecuting his appeal before the High Court, counsel for the applicant advanced the argument that the facts of the case tendered by the prosecution upon the applicant's plea of guilty were not capable of being evidential proof to the satisfaction of the court for forfeiture of the vehicle as they were only in consideration for the purpose of F G H I

A sentencing (*PP v. Low Hua Ung & Anor*). The High Court, however, upheld the conviction and sentence. The issues that arose were, (i) whether the leave application herein involved the determination of any question of law; and (ii) whether it was outside the ambit and scope of the said s. 50 CJA.

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Held (dismissing application)
Per Syed Ahmad Helmy JCA delivering the judgment of the court:

C **(1)** From the express wording of s. 50 of the CJA, two pre-conditions must be fulfilled by the applicant for the Court of Appeal to be conferred jurisdiction, namely (i) a leave application must be filed within 14 days from the date of the High Court decision; (ii) it must be shown in the leave application the question of law which arose in the course of
D the appeal and the determination of which by the High Court had affected the event of the appeal. There was no dispute that the first pre-requisite had been fulfilled by the applicant. As for the second pre-requisite, the crucial element of 'question of law' must relate to questions involving the
E interpretation of relevant and applicable legal principles. It is totally different from questions of fact which require references to facts and evidence and the inferences drawn from the facts. In essence, questions of law are questions involving legal
F principles of wide applicability in diverse situations and not confined to any particular facts. (paras 12, 14 & 17)

(2) The issues the applicant sought to raise was in relation to the order of the Magistrate ordering the forfeiture of a motor van which was the subject matter of the charge. The powers of
G the Magistrate to make such an order is specifically provided for by s. 51 of the Act. The pre-requisite for the exercise of the forfeiture power was that it was proven to the satisfaction of the Magistrate that an offence under s. 33 had been committed and the vehicle in question was the subject matter
H of the offence. Upon the pre-requisites being fulfilled, it became mandatory for the Magistrate to order the forfeiture. (paras 19 & 20)

(3) From the notes of proceedings in the Magistrate's Court, the
I record showed that the charge was read, explained and understood in Bahasa Malaysia whereupon the applicant pleaded guilty. The nature and consequences of the guilty plea

was explained to the applicant who still maintained the plea so entered. The learned Magistrate also specifically informed the applicant of the vehicle being forfeited as a consequence of the guilty plea but the applicant stood his ground and still maintained his plea. The applicant did not at any time object to the facts and the accompanying exhibits tendered. Hence, the scenario was related to issues involving determination of facts by the Magistrate based on the evidence presented before him as a consequence of his guilty plea. (paras 23, 24, 26 & 27)

(4) In the charge herein, not only was s. 51 expressly referred to but the vehicle namely the motor van as the subject matter of the charge was specifically mentioned. The significance thereof clearly differentiated the factual pattern existing in *PP v. Low Hua Ung* relied upon by the applicant. Thus, the application herein did not involve the determination of any question of law. It revolved around question of facts and as such, was outside the ambit and scope of s. 50 of the CJA. (paras 28 & 29)

Bahasa Malaysia *Translation Of Headnotes*

Permohonan untuk kebenaran di sini berkenaan skop s. 50(2) Akta Mahkamah Kehakiman 1964 ('AMK') berhubungan rayuan terhadap sabitan dan hukuman di bawah ss. 33 dan s. 51 Akta Lembaga Pelesenan Kenderaan Perdagangan 1987 ('Akta') yang diputuskan oleh Mahkamah Majistret. Secara ringkasnya, fakta-fakta menunjukkan bahawa pemohon telah dituduh oleh Mahkamah Majistret di bawah s. 33 Akta iaitu sebagai pemilik berdaftar van swasta, di mana pemohon telah membenarkan satu Othman Ahmad menggunakan kenderaan itu sebagai perkhidmatan awam (bas sekolah) tanpa permit yang membenarkan penggunaan sedemikian. Pemohon, yang tidak diwakili, memasukkan pengakuan bersalah dan apabila pihak pendakwa mengemukakan fakta-fakta kes dan eksibit-eksibit yang relevan, Majistret telah menyabitkan pemohon dan menjatuhkan hukuman denda RM1,000 jika ingkar penjara selama 30 hari dan membuat perintah perlucuthakan kenderaan. Dalam rayuannya di hadapan Mahkamah Tinggi, peguam bagi pihak pemohon telah berhujah bahawa fakta kes yang dikemukakan oleh pihak pendakwa apabila pemohon telah mengaku salah tidak boleh digunakan sebagai keterangan bukti bagi kepuasan mahkamah

membuat perintah perlucuthakan kenderaan kerana ia hanya untuk dipertimbangkan bagi tujuan menjatuhkan hukuman (*PP v. Low Hua Ung & Anor*). Mahkamah Tinggi, walaubagaimanapun, mengekalkan sabitan dan hukuman. Isu-isu yang timbul di sini adalah, (i) sama ada permohonan kebenaran di sini melibatkan penentuan apa-apa persoalan undang-undang; dan (ii) sama ada ia di luar bidang kuasa dan skop s. 50 AMK tersebut.

Diputuskan (menolak permohonan)
Oleh Syed Ahmad Helmy HMR menyampaikan penghakiman mahkamah:

(1) Dari kata-kata ekspres s. 50 AMK, dua pra-syarat perlu dipenuhi oleh pemohon untuk Mahkamah Rayuan diberi bidangkuasa, iaitu (i) permohonan kebenaran harus difailkan dalam tempoh 14 hari dari tarikh perintah Mahkamah Tinggi; (ii) ia mesti ditunjukkan dalam permohonan kebenaran persoalan undang-undang yang timbul dalam perjalanan rayuan dan penentuan oleh Mahkamah Tinggi yang telah menjejaskan acara rayuan. Tiada pertikaian bahawa pra-syarat pertama telah dipenuhi oleh pemohon. Bagi pra-syarat kedua pula, elemen penting 'persoalan undang-undang' perlu berkaitan dengan soalan-soalan yang melibatkan tafsiran prinsip-prinsip yang relevan dan undang-undang yang terpakai. Ia adalah berbeza daripada soalan fakta yang memerlukan rujukan kepada fakta dan keterangan serta kesimpulan-kesimpulan yang diambil dari fakta-fakta. Pada asasnya, persoalan-persoalan undang-undang adalah soalan-soalan yang melibatkan prinsip undang-undang yang kebolehgunaannya luas dalam pelbagai keadaan dan tidak terhad kepada apa-apa fakta tertentu.

(2) Isu-isu yang pemohon ingin membangkitkan berkaitan dengan perintah Majistret memerintahkan pelucuthakan motor van yang menjadi hal perkara pertuduhan. Kuasa-kuasa Majistret membuat perintah sebegitu khususnya disediakan oleh s. 51 Akta. Pra-syarat bagi pelaksanaan kuasa pelucuthakan adalah ia harus dibuktikan pada kepuasan Majistret bahawa satu kesalahan di bawah s. 33 telah dilakukan dan kenderaan yang dipersoalkan itu adalah hal perkara kesalahan itu. Apabila pra-syarat tersebut dipenuhi, ia menjadi mandatori bagi Majistret membuat perintah pelucuthakan.

(3) Daripada nota-nota prosiding di dalam Mahkamah Majistret, rekod menunjukkan bahawa pertuduhan telahpun dibacakan, dijelaskan dan difahamkan dalam Bahasa Malaysia di mana pemohon telah mengaku salah. Sifat dan akibat pengakuan salah telah dijelaskan kepada pemohon yang masih mengekalkan pengakuan yang dimasukkan. Majistret telah secara khususnya memberitahu pemohon mengenai pelucuthakan kenderaan itu sebagai akibat pengakuan salah tetapi pemohon memegang kepada pendiriannya dan mengekalkan pengakuannya. Pemohon tidak pada bila-bila masa membantah fakta-fakta dan eksibit-eksibit yang disertakan. Oleh itu, keadaan tersebut berkaitan isu-isu yang melibatkan penentuan fakta-fakta oleh Majistret berdasarkan keterangan yang dibentangkan di hadapannya sebagai akibat pengakuan salah.

(4) Di dalam pertuduhan ini, bukan sahaja s. 51 dengan nyata dirujuk tetapi kenderaan iaitu motor van sebagai hal perkara telah disebut secara spesifik. Kepentingan perkara-perkara ini membezakan kes ini dari corak fakta yang terdapat di dalam *PP v. Low Hua Ung* yang telah dirujuk oleh pemohon. Oleh itu, permohonan ini tidak melibatkan penentuan persoalan undang-undang. Ia berkisar persoalan-persoalan fakta dan dengan itu adalah di luar bidang kuasa dan skop s. 50 AMK.

Case(s) referred to:
Edwards (Inspector of Taxes) v. Bairstow and Anor [1956] AC 4 ***(refd)***
Keng Soon Finance v. Pegawai Kanan Kastam Johore Bahru [1981] 1 LNS 63 FC ***(refd)***
PP v. Low Hua Ung & Anor [2008] 9 CLJ 178 HC ***(dist)***
PP v. Pasupathy Kanagasaby [2001] 2 CLJ 753 CA ***(refd)***
Saad Abas & Anor v. PP [1998] 4 CLJ 575 CA ***(refd)***

Legislation referred to:
Commercial Vehicles Licence Board Act 1987, ss. 33, 45A(1), 51
Courts of Judicature Act 1964, s. 50(2)
Customs Act 1967, s. 128(4)

For the applicant/appellant - M/s GSP Ravindran & Co
For the respondent - Mohamad Abazafree Mohamad Abbas; DPP

[Appeal from High Court Malaya, Johor Bahru; Criminal Trial No: MT(3)-41H(A)-02-2010]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Syed Ahmad Helmy JCA:

[1] The application for leave herein concerns the scope of s. 50(2) of the Courts of Judicature Act 1964 (CJA) relating to an appeal against conviction and sentence under s. 33 and 51 of the Commercial Vehicles Licence Board Act 1987 (the Act) of the Magistrate's court and upheld by the High Court.

[2] The leave application by the applicant/appellant is made under s. 50(2) of the CJA on the basis that at the appeal hearing before the High Court questions of law was raised which points of law had affected the event of appeal.

[3] In the supporting affidavit of the applicant in support of his motion for leave he adverted to seven points of law which were raised in the appeal before the High Court and they are as follows:

(i) the applicant appellant only pleaded to committing an offence under s. 33 of the Act which only provides for the punishment of a fine or imprisonment or both and no provision for forfeiture.

(ii) Section 51(3) of the Act which allows for forfeiture of vehicles is not a section stipulating any offence.

(iii) Under s. 51(3) pre conditions must be satisfied prior to the making of any order of forfeiture.

(iv) The pre conditions being that it must prove to the satisfaction of the court that an offence under s. 33 has been committed and the vehicle was the subject matter of that offence.

(v) Facts of case and all other documents tendered as exhibits after applicant had pleaded guilty are not capable of being evidence and are only tendered for purposes of sentencing.

(vi) A guilty plea under s. 33 is not capable of being evidence for forfeiture order under s. 51(3).

(vii) Section 51(3) envisages forfeiture of vehicle in circumstance where the owner of vehicle subject to s. 33 offence is not convicted of such offence.

[4] To appreciate and gain an insight of the applicant's submission a brief factual background would prove invaluable. A

[5] The applicant was charged before the Kota Tinggi Magistrate's court under s. 33 of the Commercial Vehicles Licence Board Act in that as the registered owner of private van bearing registration number JHG 7812 he permitted one Othman @ Manap bin Ahmad to use the vehicle as a public service vehicle (school bus) without a permit allowing for such use. B

[6] The charge in its original language reads as follows: C

> Bahawa kamu pada 15/10/2010 jam lebih kurang 6.45am di Sekolah Menengah Sri Saujana, Kota Tinggi dalam daerah Kota Tinggi dalam Negeri Johor Darul Ta'zim sebagai pemilik kenderaan van persendirian nombor pendaftaran JHG 7812 telah membenarkan pemandu kamu Othman @ Manap bin Ahmad no. kad pengenalan 461019-01-5467 menggunakan kenderaan tersebut sebagai Kenderaan Perkhidmatan Awam (bas pekerja/bas sekolah/ kereta sewa/teksi/limo) tanpa satu lessen (permit) yang membenarkan penggunaan sedemikian dan dengan demikian kamu telah melakukan satu kesalahan di bawah Seksyen 33 Akta Lembaga Pelesenan Kenderaan Perdagangan 1987 (Akta LPKP 87) dan disabitkan hukuman, kamu boleh dihukum dibawah Seksyen 33 Akta LPKP87 dan kenderaan kamu hendaklah dilucuthak di bawah Seksyen 51 Akta yang sama. D E

[7] At this juncture, it is instructive to note that the wording of the charge pertaining to sentencing upon conviction includes the provision of forfeiture under s. 51 of the Act, the significance of which would be impacted to in the latter part of our judgment. F

[8] The applicant who was unrepresented entered a guilty plea and upon the prosecution tendering the facts of the case and the relevant exhibits, the Magistrate convicted and sentenced him to a fine of RM1,000 or in default 30 days imprisonment and ordered the forfeiture of the vehicle. G

[9] In prosecuting his appeal before the High Court, learned counsel for the applicant advanced the argument that the facts of the case tendered by the prosecution upon the applicant's plea of guilty are not capable of being evidence as proof to the satisfaction of the court for forfeiture of the vehicle as they are only consideration for purpose of sentencing and alluded to the High Court decision in *PP v. Low Hua Ung & Anor* [2008] 9 CLJ 178 where the learned judge held that brief facts tendered by the prosecution after the accused had pleaded guilty was not part of H I

A the evidence. The learned judge's reasoning being that the law of evidence in substance is related to conviction and the brief facts could not be used in law for the purpose of conviction or any other related matters as to liability save as to use for the purpose of sentencing only.

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[10] In the light of the arguments advanced it is proposed to embark upon an appraisal of the scope of s. 50 of the CJA to ascertain whether the matters complained pertaining to forfeiture under the Act fulfils the prerequisites of s. 50 of the CJA.

C

[11] Section 50 of the CJA relates to the statutory jurisdiction conferred on the Court of Appeal in the hearing and determination of criminal appeals from the lower courts. The full text of s. 50 reads as follows:

D

50. Jurisdiction to hear and determine criminal appeals.

(1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High

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Court:

(a) in the exercise of its original jurisdiction; and

(b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by

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the Sessions Court.

(2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by

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a Magistrates' Court but such appeal shall be confined to only question of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

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(2A) An application for leave under subsection (2) shall be made within fourteen days after the date of the decision of the High Court.

(3) Notice of any appeal by the Public Prosecutor shall be

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signed by the Public Prosecutor, the Solicitor General or any other officer authorized by the Public Prosecutor; and notwithstanding subsection (2) no leave of the Court of Appeal is required.

(4) Except as otherwise provided in this section, an appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.

[12] From the express wording of s. 50 and in particular to sub-s. 2 thereof, for the Court of Appeal to be conferred jurisdiction two pre-conditions must be fulfilled by the applicant, namely:

(a) a leave application must be filed within 14 days from the date of the High Court decision.

(b) it must be shown in the leave application the question of law which arose in the course of the appeal and the determination of which by the High Court has affected the event of the appeal.

[13] The pre-requisites aforesaid was lucidly explained by Lamin Mohd Yunus PCA in *PP v. Pasupathy Kanagasaby* [2001] 2 CLJ 753 when he said:

> When an accused person desires to appeal, the full force of sub-section (2) comes into play. He has to apply for "leave" and that his appeal must be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

[14] In the factual matrix herein there is no dispute that the pre-requisite has been fulfilled by the applicant through his filing of the notice of motion in encl. 2(a) supported by the applicant's affidavit in encl. 2(b).

[15] The question that needs addressing is whether the applicant has satisfied pre-requisite two namely the question or questions of law that has arisen.

[16] In embarking upon the determination of the second pre-requisite it is helpful to allude to the judgment of Lamin Mohd Yunus PMR in *Saad Abas & Anor v. PP* [1998] 4 CLJ 575 where the scope of s. 50(2) CJA was discussed at great lengths:

> The next issue under s. 50(2) is whether the "order" or "decision" to call for the defence is "a question of law which has arisen in the course of the appeal and the determination of which by the High Court has affected the event of the appeal." In the case of *Au King Chor & Ors v. Public Prosecutor* [1985] 1 MUJ 216,

A the Federal Court had to decide on two applications for leave to appeal to the Federal Court under the old provision of sub-s. (3A)(i) of s. 50 of the Courts of Judicature Act. For ease of reference I repeat the full text of sub-s. (3A) which was introduced by Act A556 of 1983 and it took effect on 13 May 1983. (Note: The said subsection was however deleted by Act A606 of 1984 which took effect on 1 January 1985.) Subsection (3A) reads:

> (3A) (i) Notwithstanding the preceding provisions of this section, either party may apply to the Federal Court for leave to appeal against any other order made by the High Court involving a question of law of public interest that would affect or has affected the course of the trial in the exercise of its original criminal jurisdiction.
>
> (ii) The application for leave referred to in paragraph (i) shall be made to the Federal Court by motion within seven days of the making of the order sought to be appealed against, and in the event leave is granted, the appeal shall proceed to be heard on the motion for leave.

The two applications put before the court the following two questions namely:

(a) whether the admission of a documentary evidence under s. 32 of the Evidence Act 1950 was right without holding a proper inquiry or trial within-a-trial and

(b) whether the admission of a documentary evidence made either wholly or in part by the accused was right without its makers being called to tender and produce them. There were nine accused who were jointly tried by the High Court below and in the course of the trial two prosecution exhibits namely the two documents were admitted by the learned trial Judge. It was the submission of the counsels for the defence that the orders of the learned trial judge admitting those documents involved a question of law of public interest affecting the course of the trial and therefore it was a proper case for leave to appeal to be granted. The applications were however dismissed. The so called questions of law in *Au King Chor*'s case do appear to be different from the one in the case before us. In the former, the question related to the orders of the judge admitting documentary evidence in the course of a trial whereas in the latter ie, in the case before us related to the order calling for the defence. Both have one

quality in common in that they are incidences occurring in mid-trial. In this regard I propose to repeat the last few passages from the judgment in *Au King Chor*'s case as follows:

> An application for leave to appeal against an order made by the High Court involving a question of law under section 50(3A)(i) is, in that sense, similar to an application for leave for the determination of a question of law under section 66 of the Act. However there seems to be a distinguishing feature. The clear words of section 50(3A)(i) indicate that fundamentally the order the party seeks to appeal against should not only involve a question of law of public interest but must also be one which would affect or has affected the course of the trial. It entails, in our view, some element of finality in the order such that it would affect or has affected the course of the trial meaning the passage or progress of the proceedings.

Subsection (3A)(i) requires that the question of law of public interest to be determined by the Court must be that "would affect or has affected the course of the trial ..." In the view of the Federal Court that would mean:

> It entails, in our view, some element of finality in the order such that it would affect or affected the course of the trial meaning the passage or progress of the proceedings.

The court proceeded to observe as to the intent or purport of the words: "has affected the course of the trial" appearing in sub-s. (3A)(i) and the words "has affected the event of the appeal" appearing in the old s. 66 and it had this to say:

> The position under section 66 of the Act is that it requires the question of law determined by the High Court and sought to be referred to the Federal Court for its determination to be one which has affected the event of the appeal and has influenced the result of the appeal and in the sense that there is a finality in the decision. Section 50(3A)(i), on the other hand, although it does not contain similar words such as "has affected the event of the appeal," but contains the words "would or has affected the course of the trial," we are nonetheless of the view that they do produce a substantially similar effect.

Those words have the effect of determining the real import of the provision and therefore it does not matter whether the word "order" or "decision" is being used.

The present s. 50(2) also carries the words "has affected the event of the appeal" and we therefore do not propose to depart from what has just been said above. The order of the High Court in the present case for which leave to appeal is sought was that the applicants were to enter their defence. At the stage of making the order certainly it has no finality in its intent. Only after the close of the defence as a result of that order will there be finality. Only after the close of the defence will there be a decision to "affect the event of the appeal" meaning that the defence story will finally determine the result of the whole case which was the purpose of the appeal.

The other point is that the present s. 50(2) employs the word "decision" while s. 50(3A)(i) employs the word "order." We do not think that they merit any lengthy discussion in view of the context in which they are being used. However to refresh our memory, we take the liberty to refer to *Wharton*'s *Law Lexicon* (14th edn) at p. 305 for the meaning of the word "decision" and it gives us the meaning simply as "a judgment". For the word "judgment" at p. 545 it means "judicial determination: decision of a court." It also gives some background history as to the usage of the word and also mentions species of judgments such as "interlocutory" and "final". For our present purpose we are satisfied and it is sufficient with its meaning as "judicial determination: decision of a court." As for the word "order" at p. 718, it gives the meaning as "mandate, precept, command:" while for the word "precept" it gives at p. 789 as "rule authoritatively given; a mandate;" Whitton J in the case of *Gng Eng Hwoo v. Regina* [1954] MUJ 256 attempted to look for the definition of the word "order" appearing in s. 296 of the Singapore Criminal Procedure Code (Cap. 21). Section 296 reads:

> 296.(1) No appeal shall lie from a judgment, sentence or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.
>
> (2) No appeal shall lie from a judgment, sentence or order of a Police Court in any of the cases specified in Schedule 'C'.

The learned judge had this to say at p. 257:

> I have been unable to find any definition of the word "order" which appears to fit its use in this section, but my research into the matter has led me to the conclusion that in connection with a criminal cause or matter the word is confined, broadly speaking, to those final decisions of a Court which affect parties to the proceedings in respect of their person or property.

Whether it is a judgment, decision or order pronounced by a court, there must be an element of finality before there can be an appeal.

Now we may recall s. 50(2) of the Courts of Judicature Act 1964, it employs the word "decision" which is defined in s. 3. Early this year by Amendment Act A 1031 of 1998, that definition was amended to read:

> "decision" means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

So, for the purpose of s. 50(2), this court has first to ascertain whether the "decision" of the High Court in ordering the applicants before us to enter on their defence was a ruling that had the effect of finally disposing of their rights. Certainly not and it would only happen after a decision had been made at the close of the defence.

Now, one final and vital point to be shown in an application made under s. 50(2) is one without which the application may be dismissed. It is this. The affidavit in support must formulate the "questions of law" which have arisen in the course of the appeal "and the determination of which by the High Court has affected the event of the appeal." Not one such "question of law" was formulated. If we had so minded we could have summarily dismissed the application on this ground.

[17] The crucial element of "question of law" must in our view relate to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of fact which require references to facts and evidence and the inferences drawn from facts. In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.

[18] The rationale is best reflected by the passage by Lord Radcliffe in *Edwards (Inspector of Taxes) v. Bairstow and Anor* [1956] AC 4 which is reproduced hereunder:

> As I see it, the reason why the courts do not interfere with commissioners' findings or determinations when they really do involve nothing but the question of fact is not any supposed advantage in the commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal, and in the interests of the efficient

A administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners. Their duty is more than to examine those facts with decent respect for the tribunal appealed from and if they think that the only reasonable conclusion on the facts found inconsistent with the determination come to, to say so without more ado.

[19] Reverting to the application herein and in particular to the supporting affidavit in encl. 2(b) the issues the applicant sought to raise relates to the order of the learned Magistrate ordering the forfeiture of the motor van which is the subject matter of the charge. The powers of the Magistrate to make such an order is specifically provided for by s. 51 of the Act which states as follows:

51. (1) Every appeal shall be by notice in writing which shall be filed with Registrar of the Court from which the appeal lies at the place where the decision appealed against was given within fourteen days after the date of the decision.

(2) Every notice of appeal shall state shortly the substance of the judgment appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate, and, except where the notice of appeal is given orally under section 54, shall be signed by the appellant or his advocate:

Provided that, in a case of an appeal under subsection 50(2), the computation of the aforesaid period of fourteen days shall commence from the date immediately after leave has been granted by the Court of Appeal.

[20] The pre-requisite for the exercise of the forfeiture power is that it is proven to the satisfaction of the Magistrate that an offence under s. 33 has been committed and the vehicle in question was the subject matter of the offence. Upon the pre-requisites being fulfilled it becomes mandatory for the Magistrate to order the forfeiture.

[21] The mandatory nature of the court to order forfeiture is distilled from the Federal Court decision of *Keng Soon Finance v. Pegawai Kanan Kastam Johore Bahru* [1981] 1 LNS 63 where the court held.

> If the court is satisfied after considering the whole of the materials before it, that an offence against the Act has been committed and that the goods were the subject matter or the vehicle was used in the commission of such an offence, then, in that event, and not otherwise, it is mandatory for the court to make an order of the forfeiture. It is clear therefore that before an order of forfeiture is made, the court must be satisfied that the goods were the subject matter or were used in the commission of the offence and not otherwise.

[22] *Keng Soon Finance*'s case (*supra*) had occasion to address the role of the Magistrate in adjudicating an application under s. 128(4) of the Customs Act 1967 and the Federal Court laid down the guidelines to be adopted as follows:

> It must be noted that in proceedings pursuant to section 128(4) of the Act, the function of the President or the Magistrate, as the case may be, is to examine the matter pertaining to the claim by the owner of the goods seized. In doing so he has to satisfy himself that firstly, an offence against the Act has been committed and secondly, either (a) the goods were the subject matter of the offence, or (b) where the claim relates to the conveyance, such conveyance was used in the commission of the offence. As regards proof it is for the court to consider the whole of the matter including, *inter alia*, the goods found in the conveyance, the nature of such goods, whether dutiable or otherwise, and all the circumstances surrounding the particular case.

[23] From the notes of proceedings, in the Magistrate's court as appears in pp. 13 to 14 of exh. NAGI in the supporting affidavit in encl. 2(b) the record shows that the charge was read, explained and understood in Bahasa Malaysia whereupon the applicant pleaded guilty.

[24] The nature and consequences of the guilty plea was explained to the applicant who still maintained the plea so entered. The learned Magistrate also specifically informed the applicant of the vehicle being forfeited as a consequence of the guilty plea so entered but the applicant stood his ground and still maintained his plea.

[25] Consequent to the guilty plea of the applicant the facts of the case, the notices under s. 45A(1) to both the driver of the vehicle and the applicant as the owner and the notice of seizure under s. 51 and exhibits in the form of photographs of the motor van and the JPJ records were submitted to the Magistrate who thereupon after hearing the mitigation plea handed down the sentence of a fine and forfeiture.

[26] The applicant did not at any time objected to the facts and the accompanying exhibits tendered nor did he at any time recanted his guilty plea. The nature and consequence of his plea was explained and understood by him.

[27] Hence in the scenario aforesaid can it be said that question of law have evolved within the scope of s. 50 of the CJA? The scenario to my mind relates to issues involving determination of facts by the learned Magistrate based on the evidence presented before him as a consequence of his guilty plea. No question of law evolved for determination based on the factual findings of the Magistrate.

[28] It is of crucial importance to note that in the charge herein not only was s. 51 expressly referred to but the vehicle namely the motor van as the subject matter of the charge was specifically mentioned - the significance thereof clearly differentiates the factual pattern existing in *PP v. Low Hua Ung & Anor* [2008] 9 CLJ 178 which was relied upon by the applicant.

[29] To conclude we are of the considered view that the application herein does not involve the determination of any question of law - it revolves round question of facts and as such is outside the ambit and scope of s. 50 of the CJA.

[30] The application is accordingly dismissed.